IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.03.2007

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice N.PAUL VASANTHAKUMAR

W.A. No.1731 of 2004
and
W.A.M.P.No.3236 of 2004

A.Jenasenan .. Appellant

-vs-

1.The State of Tamil Nadu,
Rep. By Secretary to Government,
Revenue Department,
Fort St.George, Chennai 9.

2.The Revenue Divisional Officer,
Kancheepuram. .. Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 01.08.2003 made in W.P.No.3036 of 2002 by means of common order in WPs.26530/01; 3036; 5322 and 35033 of 2002.

WP.No.3036/2002 filed to issue a writ of certiorarified Mandamus calling for the records connected with the proceedings in Na.Ka.A.1/5297/99 dated 3.1.2002 on the file of the Revenue Divisional Officer, Kancheepuram and consequently direct the Respondents to assign the Government Poramboke lands comprised in Survey Nos.576/1 and 578 situated in Sevilimedu Village, Kancheepuram Taluk.

For Appellant : Mr.R.Krishnamoorthy,S.C.
For Mr.V.Ayyadurai
For Respondents : Mr.K.Elango,Spl.G.P.

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J U D G M E N T

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

The above writ appeal is directed against the order of the learned single Judge dated 01.08.2003 made in W.P.No.3036 of 2002, in so far as directing the writ petitioner (appellant herein) to proceed with pending the reference and claim compensation for 0.14.0 hectares of land.

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2. For convenience, we shall refer the parties as arrayed before the learned single Judge.

3. According to the petitioner, he owned total extent of lands namely 1 acre 10 cents in Survey Nos.346/3C 1B, 346/3C 2B, 346/3C 3B, 346/3C 4B, 346/3C 5B, 346/3B 2, 345/1B, 345/2B, 344/2B 1, 344/2A 2, 350/4B and 343/1A 1A2, out of which an extent of 0.44.0 hectares is sought to be acquired under the Land Acquisition Act, 1894 (Central Act). The said acquisition was initiated for the purpose of formation of an approach road to a bridge proposed to have been constructed in the year 1997-98 across Palar river. Since the proposed acquisition affects the right of enjoyment of the entire lands inasmuch as such portion runs in a cross manner through his lands, thereby rendering the rest of the lands being unused, he made an offer for exchange of Government poramboke lands, which lie vacant for a long number of years, taking into account the continuity of the lands and their future use. The Government poramboke land is situated adjacent to his lands. There has been no income from and out of the said poramboke lands. Highlighting all these aspects, the petitioner sent a detailed letter to the District Collector reiterating his offer of exchange of Kuttai poramboke lands, setting out the feasibility for such exchange. Pursuant to such request, the second respondent – the Revenue Divisional Officer, Kancheepuram issued the impugned communication dated 03.01.2002 stating that they are not in a position to accede for exchange of lands. In view of the communication of the second respondent, the petitioner has approached this Court for necessary relief.

4. On behalf of respondents 1 and 2, the second respondent has filed a counter affidavit reiterating their stand. It is mainly stated that the alternative lands requested by the writ petitioner in Survey Nos.576/1 and 578 are water course poramboke lands situated far away from the lands of the petitioner to be acquired, and cannot be given to the writ petitioner.

5. During the pendency of the above mentioned writ proceedings, on the directions of this Court in the writ miscellaneous petition and the representation of the writ petitioner, the Government passed an order in G.O.Ms.No.58, High-Ways (H.W.2) Department dated 08.04.2003. After considering all the relevant aspects, the Government issued orders as a special case to deliver lands to the extent possible at the side of the old road to the petitioner in lieu of the lands measuring an extent of 0.44.0 hectares delivered by the petitioner for the construction of the approach road to the high tech bridge constructed across the Palaru in Sevilimedu Village in Kancheepuram District and Taluk. In the same order, the Government directed the District Collector, Kancheepuram to take necessary action as per the said Government Order.

6. The learned Judge, by the impugned order dated 01.08.2003, after recording the statement of the learned Advocate General as well as the information furnished by the Revenue Divisional Officer in his letter

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dated 03.05.2003, declined to accede to the request of the petitioner and permitted the writ petitioner to proceed with the pending reference and claim compensation for 0-14-0 hectares. In respect of 0-30-0 hectares, the learned Judge made it clear that the petitioner was not entitled to any compensation or continue the reference as an equal extent of land is being given to him.

7. Heard Mr.R.Krishnamoorthy, learned Senior Counsel appearing for the appellant as well as Mr.K.Elango, learned Special Government Pleader for the respondents.

8. Apart from relying on G.O.Ms.No.58, High Ways (H.W.2) Department dated 08.04.2003, the learned Senior Counsel appearing for the appellant has brought to our notice that Government poramboke lands are available adjoining the old road proceeding towards the burial ground.
We verified the sketch duly authenticated by the Tahsildar and the Revenue Divisional Officer, Kancheepuram. As rightly pointed out by the learned Senior Counsel, Government lands are available adjacent to the said road. It is also brought to our notice that those Government poramboke lands are adjacent to the lands of the petitioner and the petitioner has parted with his lands to the extent of 0.44.0 hectares and admittedly, the respondents have handed over an extent of 0.30.0 hectare only.

9. In the light of the factual details as well as the assertion in the form of an affidavit dated 18.03.2004 filed in WAMP No.3236 of 2004, we are of the view that the writ petitioner is entitled to the remaining land to an extent of 0.14.0 hectares from and out of the Government lands available in S.Nos.343/1B, 354/1B and 357/1B, which are lying south of S.Nos.357/1A, 354/1A and 343/1A1B1. These relevant aspects have not been noticed by the learned single Judge while rejecting a portion of the claim of the writ petitioner.

10. During the course of hearing, the learned Special Government Pleader on instructions submitted that though the above mentioned lands are available for being handed over to the writ petitioner, a direction may be issued that in the event of future expansion, the petitioner is to hand over the same to the Department. As said earlier and inasmuch as the petitioner had parted with his lands, viz., 0.44.0 hectares and in view of the Government Order referred to above, the writ petitioner is entitled to the entire extent from the Government lands in exchange of his lands.

11. Considering the factual information that the above mentioned lands are available which are adjacent to the land of the petitioner and in view of the fact that even if the same land is required for future expansion, if any, the respondents are free to invoke the provisions of the Land Acquisition Act, we reject the contention raised by the learned Special Government Pleader.

12. In the light of what is stated above, there shall be a direction

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to the respondents to hand over to the writ petitioner the remaining land to an extent of 0.14.0 hectares from and out of the Government lands available in S.Nos.343/1B, 354/1B and 357/1B, which are lying south of S.Nos.357/1A, 354/1A and 343/1A1B1.

13. The respondents shall hand over the above mentioned land to an extent of 0.14.0 hectares to the writ petitioner within a period of eight weeks from today and the necessary communication in this regard will be sent to the petitioner by 'Registered Post with Acknowledgement Due'. They are also directed to effect mutation in the Revenue Registers in favour of the writ petitioner. To this extent, the writ appeal is allowed. No costs. Consequently, the connected miscellaneous petition is closed. The sketch produced and referred to by us earlier, shall form part of our order.

[Xerox copy of Sketch attached herewith]

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

gms

To

1.The Secretary to Government,
State of Tamil Nadu,
Revenue Department,
Fort St.George, Chennai 9.

2.The Revenue Divisional Officer,
Kancheepuram.
+ 1 CC To Mr. V.Ayyadurai, Advocate SR NO. 12503

+ 1 CC to the Government Pleader SR NO 12596

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